

UNIVISION COMMUNICATIONS INC.

Christopher G. Wood
Vice President and Assistant General Counsel
Univision Communications Inc.
5999 Center Drive
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June 16, 2010

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *Applications of Comcast Corporation, General Electric
Company and NBC Universal, Inc.*
MB Docket No. 10-56

Dear Ms. Dortch:

Univision Communications Inc. ("Univision") hereby informs the Commission of its intent to participate in the referenced proceeding for the limited purpose of opposing the disclosure of Univision's confidential information to Christopher C. Cinnamon and Jeremy Kissel, attorneys at the Cinnamon Mueller law firm with whom Univision routinely engages in competitive negotiations.¹

Univision has learned that Comcast Corporation ("Comcast") submitted a copy of its retransmission consent agreement with Univision (the "Agreement") in response to a request from the Media Bureau.² Although Univision understands that the Commission

¹ Because Univision's participation as a party is limited, Univision waives its right under Section 1.1202 of the Commission's rules to receive copies of written submissions in this proceeding that do not relate to the matters discussed in this letter.

² This objection is timely filed. Although Cinnamon Mueller submitted its Acknowledgements of Confidentiality during March 2010, *see* Exhibit A, Univision did not know at that time that its confidential information would be disclosed in the context of this proceeding. Univision understands that Comcast did not produce Univision's (continued...)

may wish to review certain of Comcast's commercial agreements in connection with its evaluation of the referenced applications, Univision is concerned that disclosure of certain highly sensitive information contained in the Agreement—including pricing and other commercial terms of carriage—could prejudice Univision's ability to negotiate fairly its retransmission consent agreements with other multichannel video programming distributors. Univision is not a party to this transaction and was not given the opportunity to withhold production of the Agreement, and its business interests would be materially and irreparably harmed by improper disclosure of its Highly Confidential Information in this proceeding.

The Media Bureau has limited disclosure of Highly Confidential Information of the type contained in Univision's retransmission consent agreement to Outside Counsel who "are not involved in competitive decision-making."³ The Bureau explained that an attorney is engaged in "competitive decision-making" if his or her "activities, association, and relationship with a client . . . involve advice about or participation in the business decisions of the client or of any competitor of a Submitting Party [or] the analysis underlying the business decisions."⁴ As Mr. Kissel himself has observed on behalf of a client, "'competitive decision-making' involves decisions 'that affect contracts, . . . pricing, product design,' and other decisions made in light of similar corresponding information about a competitor."⁵

The quintessential example of this kind of "competitive decision-making" is advising a counterparty regarding "business decisions" such as the terms on which a distributor will agree to carry a television station or network. To be equitable, retransmission consent or affiliation negotiations must be arms-length; that is, one party must not have improper access to information about the commercial arrangements that its counterparty has with others.

retransmission agreement until Friday, June 11, 2010. This objection is submitted within three business days of that production.

³ *Application for Consent to the Transfer of Control of Licenses, General Electric Company, Transferor, to Comcast Corporation*, Second Protective Order, MB Docket No. 10-56, DA 10-371, at ¶ 5 (rel. Mar. 4, 2010).

⁴ *Id.*

⁵ American Cable Ass'n, *Opposition to Joint Objection to Disclosure of Confidential & Highly Confidential Information, Application for Consent to the Transfer of Control of Licenses, General Electric Company, Transferor, to Comcast Corporation*, MB Docket No. 10-56, at 2 (Apr. 2, 2010).

But Mr. Cinnamon and Mr. Kissel represent distributors with which Univision negotiates for retransmission consent. Unlike other individuals who have signed Acknowledgements of Confidentiality, they have not confirmed that they are participating in this proceeding on behalf of any client. But even if they had done so, they would be barred under the protective order from receiving Highly Confidential Information because their relationship with “a client”—in fact, in Univision’s experience, multiple clients— involves retransmission consent negotiations.⁶ Whether or not Messrs. Cinnamon and Kissel disclose the contents of the Agreement to their clients, their knowledge of the commercial terms of Univision’s relationship with Comcast inevitably will influence their conduct in retransmission consent negotiations between Univision and Cinnamon Mueller clients. Accordingly, allowing Mr. Cinnamon and Mr. Kissel to review the Agreement would “pose an unacceptable opportunity for inadvertent disclosure”⁷ and would materially prejudice Univision in its negotiations with the distributors that Cinnamon Mueller represents.

To prevent this manifest prejudice, Univision respectfully requests that the Bureau prohibit both Mr. Cinnamon and Mr. Kissel from reviewing the Agreement. Barring Messrs. Cinnamon and Kissel from reviewing the Agreement would not prejudice the ability of any client of the Cinnamon Mueller firm to participate in this proceeding. First, although the terms on which Comcast obtains programming may be relevant to the Bureau’s consideration of Comcast’s applications, Univision is not a party to the transaction and the Agreement is not at issue in this proceeding. Second, to the extent that Cinnamon Mueller intends to use the Highly Confidential Information it obtains to represent the American Cable Association (the organization whose Acknowledgements of Confidentiality it attached to its own), Univision believes that ACA’s interests can be represented adequately by Thomas Cohen, an attorney at Kelley, Drye & Warren LLP who

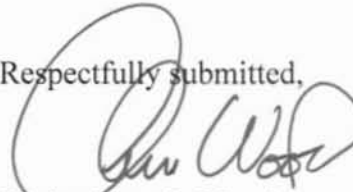
⁶ Indeed, the excerpts from the Cinnamon Mueller website attached at Exhibit B confirm Mr. Cinnamon’s and Mr. Kissel’s direct involvement with retransmission consent negotiations. For instance, Mr. Cinnamon is co-author of two articles that “give[] you some tips for how to prepare . . . for negotiations.” Mr. Kissel describes himself as “work[ing] with Cinnamon Mueller’s cable and telecommunications clients on . . . transactional matters.”

⁷ *GTE Corporation, Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer of Control*, 14 FCC Rcd 3364 ¶ 2 (1999); *Application of WorldCom, Inc. & MCI Comms. Corp. for Transfer of Control of MCI Comms. Corp. to WorldCom, Inc.*, 13 FCC Rcd 13478 ¶ 2 (1998).

apparently represents ACA and also has submitted an Acknowledgement of Confidentiality.⁸

Barring review of the Agreement by Cinnamon Mueller attorneys is essential in order to avoid improper disclosure of Highly Confidential Information and to ensure the integrity of this proceeding. Accordingly, Univision respectfully requests that the Media Bureau promptly deny Cinnamon Mueller's request to review the Agreement. Further, Univision respectfully requests that access to its Agreement be denied to any other attorney who has represented, is currently representing, or intends to represent one or more MVPDs in negotiations of carriage arrangements with Univision.

Respectfully submitted,



Christopher G. Wood

Vice President and Assistant
General Counsel

cc: William T. Lake, Esq., Chief, Media Bureau
Michael H. Hammer, Esq. and Daniel J. O'Neill, Esq., Counsel to Comcast Corp.
A. Richard Metzger, Jr., Esq., Counsel to General Electric Company
David H. Solomon, Esq., Counsel to NBC Universal, Inc.
Christopher C. Cinnamon, Cinnamon Mueller
Jeremy Kissel, Cinnamon Mueller

⁸ Mr. Cohen should be required to confirm that he has no role in retransmission consent negotiations or decision-making. If Mr. Cohen does have such a role, Univision would object to his access to its Highly Confidential Information for the reasons stated here.

Exhibit A

Received & Inspected

APPENDIX A

MAR 22 2010

Acknowledgment of Confidentiality

FCC Mail Room

MB Docket No. 10-56

I hereby acknowledge that I have received and read a copy of the foregoing Second Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Second Protective Order and that I shall not disclose or use Stamped Highly Confidential Documents or Highly Confidential Information except as allowed by the Second Protective Order. I acknowledge that a violation of the Second Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or advocacy organization), I acknowledge specifically that my access to any information obtained as a result of the Second Protective Order is due solely to my capacity as Outside Counsel or Outside Counsel of Record or Outside Consultant to a party or other person described in paragraph 12 of the foregoing Second Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Second Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Stamped Highly Confidential Documents and Highly Confidential Information are used only as provided in the Second Protective Order; and (2) Stamped Highly Confidential Documents are not duplicated except as specifically permitted by the terms of the Second Protective Order, and I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized disclosure of Stamped Highly Confidential Documents or Highly Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Second Protective Order.

Executed at Cinnamon Mueller
Chicago, IL this 18th day of March, 2010



[Name] Christopher C. Cinnamon

[Position] Attorney, Cinnamon Mueller

[Address] 307 N. Michigan Ave., Ste. 1020 Chicago, IL

[Telephone] (312) 372-3930

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APPENDIX A

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Executed at Cinnamon Muller
Chicago, IL this 18th day of March, 2010.


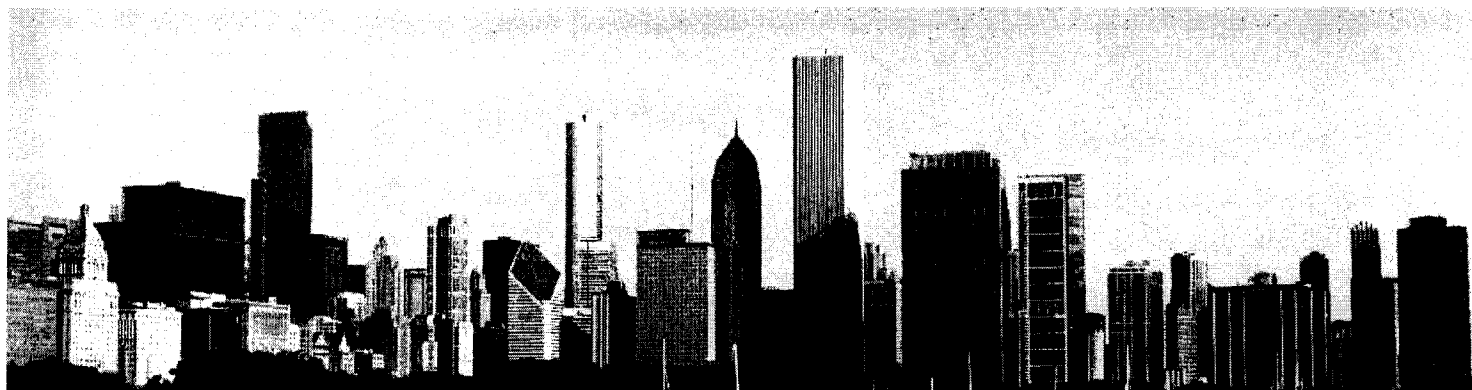

[Name] Jeremy K. Mueller
[Position] Attorney, Cinnamon Muller
[Address] 207 N. Michigan Ave. Ste 1020 Chicago, IL 6060
[Telephone] (312) 372-3930

Exhibit B

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CM | Attorneys

Christopher C. Cinnamon



As managing member of Cinnamon Mueller, Chris concentrates his practice in the representation of cable telecommunications companies. He represents clients before the Federal Communications Commission (FCC) and state and local regulatory bodies.

Given his extensive knowledge and experience, Chris is frequently asked to speak on topics including local cable franchising and broadcast signal carriage. He has authored numerous articles including "Broadcast Signal Carriage and Content Regulation: 2005 Update" published by the Practising Law Institute (PLI), a non-profit continuing legal education organization. Chris is also a faculty member of PLI.

Chris served seven years as an officer in the United States Navy, attaining the rank of Lieutenant Commander. In 1993 he graduated *cum laude* from the University of Michigan Law School and he received his B.A. with highest honors from Williams College in 1982.

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CM | Attorneys

Jeremy M. Kissel



Jeremy works with Cinnamon Mueller's cable and telecommunications clients on regulatory and transactional matters. Jeremy earned his B.S. from Florida State University in 2000, his J.D., magna cum laude, from Nova Southeastern University's Shepard Broad Law Center, and his LL.M. in Law & Government from American University's Washington College of Law in Washington, DC. Prior to joining Cinnamon Mueller, Jeremy worked at the Federal Communications Commission. Jeremy is admitted to practice in Illinois, the District of Columbia, and Florida.

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[Retransmission Consent](#)

Retransmission Consent: Get Ready for October – Part 1

Nicole E. Paolini, Ly S. Chhay, and Chris Cinnamon, Cinnamon Mueller Attorneys

The next round of retransmission consent negotiations is just a few months away. It will be the most difficult yet for small cable companies. The DTV transition, more media consolidation, cash for carriage demands, DBS competition and a process skewed in favor of powerful network broadcasters will all combine to make for tough negotiations. Now is the time to start planning. This article gives you some tips for how to prepare now for negotiations. Our next article will discuss key regulations governing the retransmission consent process and some recent FCC cases dealing with retransmission consent disputes.

How do I begin? Preparation will help you avoid surprises come October. By doing some “homework” now, you can anticipate what you will face from different broadcasters. There are also several issues that will come up in most negotiations that you can develop your company policy on now. We suggest six steps.

Step 1 - Study your markets. Who owns the network stations? What are they demanding now? For example, if you deal with Nexstar or Sinclair, you can already anticipate what they will ask for retransmission consent. If Fox owns stations in your markets, those negotiations will be different because of the small cable company conditions that ACA obtained in the News Corp/DirecTV merger. With some study, you can map this out beforehand, and identify problem negotiations.

Step 2 – Study adjacent markets. You may be able to carry out-of-market stations if the “price” for the in-market station is too high.

Step 3 – Gather information. Talk to other cable operators and see what information they can share. This can help identify what is going on in the market.

Step 4 – Determine your company’s position on key issues. Several issues will come up in negotiations this round. Different companies have different policies or “thresholds of pain” on certain issues. You can begin now to determine what your company can live with, and what it can’t. Key issues will include: • Cash for carriage • Other consideration • DTV carriage obligations • DTV multicast carriage • Dropping a station if the “price” is too high

Step 5 – Know the rules. Retransmission consent is a highly regulated transaction. FCC rules govern how a broadcaster elects retransmission consent, and how a broadcaster must negotiate. A special set of rules governs

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Retransmission Consent | Cinnamon M...

retransmission consent for stations owned by Fox. You need to be familiar with these rules and your rights under them, or at least have someone on your team that is. Our next installment will discuss the rules and cases in detail.

Step 6 – Support ACA. ACA has been at the forefront of the effort to educate policymakers on how media conglomerates use retransmission consent to increase costs and decrease choice for you and your customers. ACA will be very active on these issues in the coming months and will need your support. Please keep in touch with ACA and respond when it requests your help. While the next retransmission consent round will be difficult, there is plenty you can do to help your company negotiate more reasonable agreements. We hope the six steps outlined above help get you started.

Cinnamon Mueller serves as general counsel to the American Cable Association and concentrates on the representation of independent cable companies throughout the U.S. in transactions and regulatory matters. You can reach Nicole, Ly or Chris at 312-372- 3930.

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Retransmission Consent Part 2

Retransmission Consent Part 2: Key Regulations and a Recent FCC Case

Chris Cinnamon and Emily A. Denney

As the next round of retransmission consent approaches, there are FCC rules you should be familiar with. One of the most powerful rules for cable operators is the requirement that a broadcaster negotiate retransmission consent in good faith. Read below for key information.

FCC Regulations You Should Know – Good Faith is Key You are not alone if you are asking yourself... “What are broadcasters allowed to do under the rules?” This section should help answer your question. The rules allow broadcasters to do the following:

- Ask for compensation above that agreed to with other MVPDs in the same market.
- Ask for compensation that is different from the compensation offered by other broadcasters in the same market.
- Propose that carriage be conditioned on carriage of other programming.
- Propose that carriage be conditioned on a broadcaster obtaining channel positioning or tier placement rights.
- Ask for compensation in the form of commitments to purchase advertising on the broadcast station or broadcast-affiliated media.

On the other hand, there are several examples of broadcaster bargaining positions that presumptively conflict with the good faith negotiation requirement. These include:

- Proposals that specifically foreclose carriage of other non-duplicative programming services.
- Proposals involving compensation or carriage terms that result from an exercise of market power by a broadcast station the effect of which is to hinder significantly or foreclose MVPD competition.
- Proposals that result from agreements not to compete or to fix prices.
- Proposals for contract terms that would foreclose the filing of complaints with the Commission. The Commission has also concluded that the following broadcaster conduct violates the obligation to negotiate in good faith:
 - Refusal to negotiate retransmission consent.
 - Refusal to designate a representative with authority to make binding representations.
 - Refusal to meet and negotiate at reasonable times and locations.
 - Unreasonably delaying negotiations.

- Refusal to put forth more than a single, unilateral proposal.
- Failure to respond to a proposal from an MVPD, including the reasons for rejecting a proposal.
- Executing an agreement that prevents the broadcaster from entering into a retransmission consent agreement with any other MVPD.
- Refusal to execute an agreement that sets forth the full understanding of the parties.

Retransmission Consent at the FCC – Horry Telephone Cooperative As we recently reported in our Client Update, at the end of January an independent cable operator filed an Emergency Retransmission Consent Complaint with the FCC. The operator, Horry Telephone Cooperative, Inc. (“HTC”), alleged that the local Fox affiliate, WFXB, refused to grant HTC retransmission consent for WFXB’s DTV signal because it had entered into an “exclusive agreement” with Time Warner, which competes with HTC in certain franchise areas. As a result, Time Warner would be able to offer the Super Bowl and the Daytona 500 in HD, but Horry would not. HTC filed its Emergency Complaint on Tuesday, January 18, and asked for expedited action. In a strong message to broadcasters, the FCC responded the next day. In a January 19 Public Notice, the FCC ordered WFXB to respond to HTC’s Emergency Complaint in five days. The Public Notice stated, “Because of the significance and time sensitive nature of HTC’s allegations, we see good cause to establish an accelerated pleading cycle in this matter so that it can be resolved in an expedited manner.” WFXB quickly reversed its position and granted HTC retransmission consent. The case settled, and HTC withdrew its Complaint. Cinnamon Mueller represented HTC in this case. In our final installment about Retransmission Consent we will discuss other important questions, including, for example, determining when a broadcaster is entitled to carriage on a cable system.

Cinnamon Mueller serves as general counsel to the American Cable Association and concentrates on the representation of independent cable companies throughout the U.S. in transactions and regulatory matters. You can reach Chris or Emily at 312-372-3930.

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